

(BILLING CODE: 4810-02-P)

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506-AA28**

**Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Insurance Companies**

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN is issuing this proposed rule to prescribe minimum standards applicable to insurance companies pursuant to the revised provision in the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs.

**DATES:** Written comments may be submitted on or before [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, D.C., area may be delayed. Comments submitted by electronic mail may be sent to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption in the body of the text, “ATTN: Section 352 – Insurance Company Regulations.” Comments (preferably an original and four copies) also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: Section 352 – Insurance Company Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, D.C. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of Chief Counsel, FinCEN, (703) 905-3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622-1927; or the Office of the Assistant General Counsel for Banking and Finance (Treasury), (202) 622-0480 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code.<sup>1</sup> These amendments are intended to provide additional tools to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amends section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 352(c) of the Act directs the Secretary to prescribe regulations for anti-money laundering programs that are “commensurate with the size, location, and activities” of the financial institutions to which such regulations apply. Section 5318(h)(1) permits the Secretary to exempt from this anti-money laundering program requirement those financial institutions not currently subject to FinCEN’s regulations

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<sup>1</sup> Regulations implementing the BSA appear at 31 CFR Part 103. The authority of the Secretary to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

implementing the BSA. Section 5318(a)(6) of the BSA further provides that the Secretary may exempt any financial institution from any BSA requirement. Taken together, these provisions authorize the issuance of anti-money laundering program regulations that may differ with respect to certain kinds of financial institutions, and that may exempt certain financial institutions (and, by extension, certain financial institutions within the same industry) from the requirements of section 5318(h)(1).

Although insurance companies have long been defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(M), FinCEN has not previously defined the term or issued regulations regarding insurance companies. In April 2002, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to the insurance industry. 67 FR 21110 (April 29, 2002). The purpose of the deferral was to provide Treasury time to study the insurance industry and to consider how anti-money laundering controls could best be applied to that industry, taking into account differences in size, location, and services within the industry.

Insurance can generally be described as “a contract by which one party (the insurer), for a consideration that is usually paid in money, either in a lump sum or at different times during the continuance of the risk, promises to make a certain payment, usually of money, upon the destruction or injury of ‘something’ in which the other party (the insured) has an interest.”<sup>2</sup> In other words, the purpose of insurance is to transfer risk from the insured to the insurer. Insurance companies act as financial intermediaries by providing a financial risk transfer service that is funded by the payment of insurance premiums that they receive from policyholders.

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<sup>2</sup> Lee R. Rus & Thomas F. Segalla, Couch on Insurance § 1:6, at 1-11 (3d ed.).

The insurance industry in the United States can generally be divided into three major sectors based on a company's line of business: (1) life; (2) property/casualty; and (3) health.<sup>3</sup> Life insurance provides protection against the death of an individual in the form of payment to a beneficiary. Life insurance may also offer "living benefits" in the form of a cash surrender value or income payments. Recently, life insurers have developed products that offer a variety of investment components, such as interest indexed universal life (which has interest credits linked to external factors) and variable life (where the amount and duration of benefits are linked to investment experience), and that offer the insured the ability to overpay the premium for a fixed rate of return. Such products are marketed to investors as part of a diversified portfolio, often with tax benefits. Annuities, which are generally considered part of the life insurance sector, are purchased to provide a stipulated income stream over a period of time, and are frequently used for retirement planning purposes. Property insurance indemnifies an insured whose property is stolen, damaged, or destroyed by a covered peril. Casualty insurance provides coverage primarily for the liability of an individual or organization that results from negligent acts and omissions that cause bodily injury and/or property damage to a third party. Health insurance covers the costs of health care. Many insurance companies, particularly the larger ones, offer more than one kind of insurance product.

An insurance company may offer its products through a number of different distribution channels. Some insurance companies sell their products through direct response marketing in which the insurance company sells a policy directly to the insured. Other companies employ

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<sup>3</sup> In 2000, the insurance industry in the United States consisted of more than 7000 domestic insurance companies and total gross direct premiums exceeded \$956 billion. Net premiums written in both the life and property/casualty sectors grew annually between 1992 and 2000. In 2000, the insurance industry, including insurance companies, agents, brokers, and service personnel, employed approximately 2.3 million people. National Association of Insurance Commissioners, 2000 Insurance Department Resources Report.

agents, who may either be captive or independent. Captive agents represent only one insurance company; independent agents may represent a variety of insurance carriers. Insurance may also be purchased through other third parties, all of which must be licensed insurance agents, but may describe themselves to customers as financial planners or investment advisors. A limited number of companies offer certain types of policies via the Internet. A customer also may employ a broker (i.e., a salesperson who searches the marketplace for insurance in the interest of the customer rather than the insurer) to obtain insurance.

The insurance industry in the United States has traditionally been subject to state, rather than federal regulation.<sup>4</sup> Matters that are subject to state regulation include the overall organization and capitalization of insurance companies, permissible investments, licensing of insurance companies and insurance agents, and the form and content of policies. In some states, insurance companies are already subject to anti-money laundering statutes, currency reporting requirements, and/or suspicious activity reporting requirements. According to an unpublished survey conducted by the National Association of Insurance Commissioners (NAIC) of state statutes or rules applicable to insurance companies, thirty-eight states have money laundering statutes, twenty-one have currency reporting requirements, and one has a suspicious activity requirement.

## **II. Money Laundering and Terrorist Financing Risks Associated with Insurance Companies**

The Congressional mandate that all financial institutions establish an anti-money laundering program is a key element in the national effort to prevent and detect money laundering and the financing of terrorism. The mandate recognizes that financial institutions

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<sup>4</sup> See the McCarran-Ferguson Act, codified at 15 U.S.C. 1011 et seq.

other than depository institutions (which have long been subject to BSA requirements) are vulnerable to money laundering.

The application of anti-money laundering measures to non-depository institutions generally, and to insurance companies in particular, also has been emphasized by the international community as a key element in combating money laundering. One of the central recommendations of the Financial Action Task Force (FATF),<sup>5</sup> of which the United States is a member, is that measures designed to prevent and detect money laundering, including the establishment of an anti-money laundering program, “should apply not only to banks, but also to non-bank financial institutions.” FATF Forty Recommendations (Recommendation 8). Similarly, in January 2002, the International Association of Insurance Supervisors (IAIS)<sup>6</sup> issued anti-money laundering guidance for insurance supervisors and insurance entities stating that:

Financial institutions including insurance entities, have become major targets of money laundering operations because of the variety of services and investment vehicles offered that can be used to conceal the source of money. Money laundering poses significant reputational and financial risk to insurance entities, as well as the risk of criminal prosecution if insurance entities become involved in laundering of the proceeds of crime.<sup>7</sup>

FinCEN believes that the most significant money laundering and terrorist financing risks in the insurance industry are found in life insurance and annuity products because such products allow a customer to place large amounts of funds into the financial system and seamlessly

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<sup>5</sup> The FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G-7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

<sup>6</sup> The IAIS is an international association representing insurance regulatory authorities from more than 100 jurisdictions. Established in 1994, the IAIS was formed to promote cooperation among insurance regulators, set international standards for insurance supervision, provide training to members, and coordinate work with regulators in other financial sectors and international financial institutions.

<sup>7</sup> IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities, January 2002, at 4.

transfer such funds to disguise their true origin. Permanent life insurance policies that have a cash surrender value are particularly inviting money laundering vehicles. Such cash value can be redeemed by a money launderer or can be used as a source of further investment of his tainted funds—for example, by taking loans out against such cash value. Term life insurance policies also pose a significant risk of money laundering because they possess elements of stored value and transferability that make them attractive to money launderers.<sup>8</sup> Similarly, annuity contracts also pose a significant money laundering risk because they allow a money launderer to exchange his illicit funds for an immediate or deferred income stream. The elements described above generally do not exist in insurance products offered by property and casualty insurers, much less by title or health insurers, although, to the extent that these sectors develop products with similar investment features, or features of stored value and transferability, the proposed rule includes a functional definition intended to include them within its scope.<sup>9</sup> FinCEN does not believe that money laundering risk should be predicated solely on the existence of an ability to obtain a refund on a purchased financial product. Rather, the focus should be on the ability of a money launderer to use a particular financial product to store and move illicit funds through the financial system. Therefore, the proposed rule captures only those insurance products with

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<sup>8</sup> For example, a narcotics trafficker based in a foreign jurisdiction can purchase a term policy from a U.S. insurer with one large, up-front premium made up of illicit funds using an elderly or ill front person as the insured, and collect the cleansed proceeds when the insured dies.

<sup>9</sup> Theoretically, a money launderer could purchase property or casualty insurance for a business with tainted funds, and transfer the business to a confederate who could cancel the policy and obtain a refund of the cleansed funds. However, this does not mean that such products possess the elements of stored value and transferability that pose a significant money laundering risk. Underwriting practices generally would prevent the conveyance of a property and casualty insurance policy upon the purchase of a business, except in the case of a change in control of a public company, in which the costs and regulatory disclosures required to change control would appear to far outweigh any potential benefit to a would-be launderer. Moreover, as property and casualty insurers determine premiums by the value of the insured property and the perceived risk, the products they issue are not effective vehicles for laundering predetermined sums.

investment features, and insurance products possessing the ability to store value and to transfer that value to another person.

The identified instances of money laundering through insurance companies generally have been confined to life insurance products. Such products appear to have been particularly attractive to narcotics money launderers. For example, as a result of a joint investigation into the narcotics trafficking and money laundering activities of Colombian drug cartels, federal law enforcement authorities have discovered that these cartels have been hiding their illicit proceeds by, among other things, purchasing life insurance policies. The money laundering scheme involves the purchase, through several insurance brokers, of life insurance policies with cash surrender values in an offshore jurisdiction. Cartel associates are named as beneficiaries to such policies. The life insurance policies are funded by narcotics proceeds that are forwarded to the insurance companies by third parties from all over the world. Although the cash surrender value of the life insurance policies is often far less than the amount invested because of liquidation penalties, particularly if the policies only have been in existence for a few years, the beneficiaries soon elect to liquidate the policies for their cash surrender value. Although the beneficiaries thereby suffer a substantial financial loss, the funds received, in the form of insurance proceeds, are effectively laundered.<sup>10</sup> In another case, the U.S. Customs Service obtained the forfeiture of illicit drug money paid to purchase three term life insurance policies in Austin, Texas. The purchase had been made with a number of structured monetary instruments, followed shortly afterward by an attempted redemption of the policies.<sup>11</sup> Law enforcement also has seen similar

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<sup>10</sup> United States v. The Contents of Account No. 400941058 At JP Morgan Chase Bank, New York, New York, Mag. Docket No. 02-1163 (S.D.N.Y. 2002) (Warrant of Seizure).

<sup>11</sup> In the Matter of Seizure of the Cash Value and Advance Premium Deposit Funds, Case No. 2002-5506-000007, (W.D. Tex. 2002).

attempts to launder funds through the purchase of variable annuity contracts.<sup>12</sup> In addition, some financial institutions have reported to FinCEN suspicious transactions involving the structured purchase of life insurance and annuities, followed by the receipt of checks from life insurance companies, and the wiring of the funds to foreign countries.

The international community also has focused on life insurance policies and those insurance products with investment features as the target of anti-money laundering programs. The interpretative note to Recommendation 8 of the FATF Forty Recommendations, relating to the establishment of anti-money laundering programs, states that “[t]he FATF [Forty] Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies.” In addition, the IAIS, in its anti-money laundering guidance to insurance businesses, states that such guidance is “primarily aimed at life insurance business[es] which [are] the predominant class being used by money launderers.”<sup>13</sup>

FinCEN understands that many insurance products are sold through agents of insurance companies. Because of their direct contact with customers, insurance agents are in a unique position to observe the kind of activity that may be indicative of money laundering. In some cases, suspicious activity detected by agents--such as the lump-sum purchase of a life insurance policy with multiple money orders or the purchase of annuity contracts by customers who express little or no interest in the details of such products, like surrender charges--may not be information that is normally known by the insurance company. This may be especially true when insurance agents sell investment products that do not need to be thoroughly scrutinized by

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<sup>12</sup> See Steven Brostoff, Variable Product Companies Cautioned to be Vigilant On Money Laundering, National Underwriter, July 1, 2002, at 40.

<sup>13</sup> IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities, January 2002, at 6.

the insurance company for underwriting purposes because they lack a health or death contingency. Thus, the proposed rule requires an insurance company to assess the money laundering and terrorist financing risks posed by its distribution channels and to incorporate policies, procedures, and internal controls integrating its agents and brokers into its anti-money laundering program. Whether an insurance company sells its products directly or through agents, FinCEN believes that it is appropriate to place on the insurance company (which develops the products and bears their risks), the responsibility for obtaining all relevant information necessary to establish and maintain an effective anti-money laundering program.

FinCEN anticipates that the measures currently employed by insurance companies to detect and combat fraud may assist such companies when establishing anti-money laundering policies and procedures. However, insurance companies should note that the risks associated with fraud and money laundering are not identical, and that combating money laundering will necessarily require the establishment of additional measures. An anti-fraud policy is concerned that premium payments clear, not with whether they are made with structured instruments or from suspicious sources. Moreover, although a person who purchases a life insurance policy with a single, lump-sum payment and subsequently redeems the policy for its cash value may not inflict any economic harm on the insurance company, such a person can use this process to cleanse his illicit funds in exchange for paying the requisite penalty or fee.

### **III. Section-by-Section Analysis**

Section 103.137(a) defines the key terms used in the proposed rule. The definition of an insurance company reflects Treasury's determination that an anti-money laundering program requirement should be imposed on those sectors of the insurance industry that pose the most significant risk of money laundering and terrorist financing. The definition of an insurance

company therefore includes any person engaged within the United States as a business in: (1) the issuing, underwriting, or reinsuring of a life insurance policy; (2) the issuing, granting, purchasing, or disposing of any annuity contract; or (3) the issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person. The sectors of the insurance industry offering life insurance and annuity products are both covered by the definition. The last category incorporates a functional approach, and encompasses any business offering currently, or in the future, any insurance product with an investment feature, and any insurance product possessing both stored value and transferability.<sup>14</sup>

The definition of an insurance company does not include insurance agents or brokers, as FinCEN believes the insurance company is in the best position to design an effective anti-money laundering program for its products, based upon the risk assessment it must perform due to the nature of its business. Agents and brokers would therefore not be required under the rule to independently establish an anti-money laundering program. However, as explained in greater detail below, an insurance company would be required to assess the money laundering and terrorist financing risks posed by its distribution channels and to incorporate policies, procedures, and internal controls integrating its agents and brokers into its anti-money laundering program. Comments are specifically invited on whether the above definition is appropriate in light of money laundering risks in the industry. Comments also are specifically invited on whether the final rule also should require insurance agents and brokers, or any subsets of agents or brokers, to establish and maintain an anti-money laundering program.

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<sup>14</sup> The definition of an insurance company includes any person engaged “as a business” in the issuing, underwriting, or reinsuring of certain insurance products, and therefore does not include charities or other non-profit organizations.

Section 103.137(b) requires that each insurance company develop and implement an anti-money laundering program reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be in writing and must be approved by senior management. An insurance company's written program also must be made available to the Department of the Treasury or its designee upon request. The minimum requirements for the anti-money laundering program are set forth in section 103.137(c). Beyond these minimum requirements, however, the proposed rule is intended to give insurance companies the flexibility to design their programs to meet their specific risks.

Section 103.137(c) sets forth the minimum requirements of an insurance company's anti-money laundering program. Section 103.137(c)(1) requires the anti-money laundering program to incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its products, customers, distribution channels, and geographic locations. As explained above, an insurance company's assessment of customer-related information, such as methods of payment, is a key component to an effective anti-money laundering program. Thus, an insurance company's anti-money laundering program must ensure that the company obtain all the information necessary to make its anti-money laundering program effective. Such information includes, but is not limited to, relevant customer information collected and maintained by the insurance company's agents and brokers. The specific means to obtain such information is left to the discretion of the insurance company, although Treasury anticipates that the insurance company may need to amend existing agreements with its agents and brokers to ensure that the company receives necessary customer information.

For purposes of making the required risk assessment, an insurance company must consider all relevant information. The following are just some of the many factors that should be considered by an insurance company when making its risk assessment: whether the company permits customers to use cash or cash equivalents to purchase an insurance product, whether the company permits customers to purchase an insurance product with a single premium or lump-sum payment, and whether the company permits customers to take out a loan against the value of an insurance product. Other factors that should be considered include whether the insurance company engages in transactions involving a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371, has been designated as non-cooperative with international anti-money laundering principles, or has been designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns.

Policies, procedures, and internal controls also must be reasonably designed to ensure compliance with BSA requirements. The only BSA regulatory requirement currently applicable to insurance companies is the obligation to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than \$10,000 in one transaction or in two or more related transactions. Insurance companies may in the future be required to comply with BSA requirements regarding accountholder identification and verification pursuant to section 326 of the Act, as well as the filing of suspicious activity reports. As insurance companies become subject to additional BSA requirements, their compliance programs will obviously have to be updated to include appropriate policies, procedures, training, and testing functions.

Insurance companies typically conduct their operations through agents and third-party service providers. Some elements of the compliance program will best be performed by

personnel of these entities, in which case it is permissible for an insurance company to delegate contractually the implementation and operation of those aspects of its anti-money laundering program to such an entity. Any insurance company that delegates responsibility for aspects of its anti-money laundering program to an agent or a third party, however, remains fully responsible for the effectiveness of the program, as well as ensuring that federal examiners are able to obtain information and records relating to the anti-money laundering program and to inspect the agent or the third party for purposes of the program. In addition, an insurance company remains responsible for the following: assuring compliance with this regulation; taking reasonable steps to identify the aspects of its operations that may give rise to BSA regulatory requirements or that are vulnerable to money laundering or terrorist financing activity; developing and implementing a program reasonably designed to achieve compliance with such regulatory requirements and to prevent such activity; monitoring the operation of its program; and assessing the effectiveness of its program. For example, it would not be sufficient for an insurance company simply to obtain a certification from its delegate that the company “has a satisfactory anti-money laundering program.”

Section 103.137(c)(2) requires that an insurance company designate a compliance officer to be responsible for administering the anti-money laundering program. An insurance company may designate a single person or committee to be responsible for compliance. The person or persons should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures. The role of the compliance officer is to ensure that (1) the program is being implemented effectively; (2) the program is updated as necessary; and (3) appropriate persons are trained and educated in accordance with section

103.137(c)(3).

Section 103.137(c)(3) requires that an insurance company provide for education and training of appropriate persons. Employee training is an integral part of any anti-money laundering program. In order to carry out their responsibilities effectively, employees of an insurance company (and of any agent or third-party service provider) with responsibility under the program must be trained in the requirements of the rule and money laundering risks generally so that “red flags” associated with existing or potential customers can be identified. Such training could be conducted by outside or in-house seminars, and could include computer-based training. The nature, scope, and frequency of the education and training program of the insurance company will depend upon the functions performed. However, those with obligations under the anti-money laundering program must be sufficiently trained to carry out their responsibilities effectively. Moreover, these employees should receive periodic updates and refreshers regarding the anti-money laundering program.

Section 103.137(c)(4) requires that an insurance company provide for independent testing of the program on a periodic basis to ensure that it complies with the requirements of the rule and that the program functions as designed. An outside consultant or accountant need not perform the test. An employee of the insurance company may perform the independent testing, so long as the tester is not the compliance officer or otherwise involved in administering the program. The frequency of the independent testing will depend upon the insurance company’s assessment of the risks posed. Any recommendations resulting from such testing should be implemented promptly or reviewed by senior management.

Section 103.137(d) states that an insurance company that is registered or is required to register with the Securities and Exchange Commission (SEC) shall be deemed to have satisfied

the requirements of this section for those activities regulated by the SEC to the extent that the company complies with the anti-money laundering program requirements applicable to such activities that are imposed by the SEC or by a self-regulatory organization (SRO) registered with the SEC. Thus, for example, an insurance company that is required to register as a broker-dealer in securities because it sells variable annuities may satisfy the anti-money laundering program requirements under the proposed rule for that activity by complying with the anti-money laundering program requirements applicable to such activity that are imposed by the SEC or one of its registered SROs. To the extent that the issuance of annuities, or any other activity by an insurance company, is not covered by an SEC or SRO-anti-money laundering program rule, then such activity would be subject to the anti-money laundering program requirements of the proposed rule.

#### **IV. Request for Comments**

FinCEN invites comment on all aspects of the proposed regulation, and specifically seeks comment on the following issues:

1. Whether the scope of the definition of an insurance company is appropriate in light of money laundering risks in the industry.
2. Whether the final rule also should require insurance agents (captive, independent, or both), or any subset of agents, to establish and maintain an anti-money laundering program.
3. Whether the final rule also should require insurance brokers, or any subset of insurance brokers, to establish and maintain an anti-money laundering program.
4. Whether the factors that should be considered as part of an insurance company's risk assessment are appropriate.

#### **V. Regulatory Flexibility Act**

It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. The costs associated with the development of anti-money laundering programs are attributable to the mandates of section 352 of the Act. Moreover, most insurance companies are larger businesses. To the extent that some insurance companies may be considered small entities, the proposed rule provides for substantial flexibility in how each insurance company may meet its requirements. This flexibility is designed to account for differences among insurance companies, including size. In this regard, the costs associated with developing and implementing an anti-money laundering program will be commensurate with the size of an insurance company. If an insurance company is small, the burden to comply with the requirements of section 352 should be correspondingly minimal. In addition, all insurance companies, in order to remain viable, have in place policies and procedures to prevent and detect fraud. Such anti-fraud measures should assist insurance companies in developing effective anti-money laundering programs. Lastly, many insurance companies, depending on the state in which they do business, are subject to existing state requirements relating to the prevention and detection of money laundering.

## **VI. Paperwork Reduction Act**

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to [jlackeyj@omb.eop.gov](mailto:jlackeyj@omb.eop.gov)), with a

copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by [INSERT DATE THAT IS 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.19 is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposed rule is in 31 CFR 103.137(b). The information will be used by federal agencies to verify compliance by insurance companies with the provisions of 31 CFR 103.137. The collection of information is mandatory. The likely recordkeepers are mostly life insurance companies.

Description of Recordkeepers: Insurance companies as defined in 31 CFR 103.137(a)(4).

Estimated Number of Recordkeepers: 1,200.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in this proposed rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 1,200 hours.

FinCEN specifically invites comments on: (a) whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, including whether the recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, and whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the

burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

## **VII. Executive Order 12866**

It has been determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

### **List of Subjects in 31 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Insurance companies, Currency, Investigations, Law Enforcement, Reporting and recordkeeping requirements.

### **Authority and Issuance**

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

## **PART 103 – FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5332; title III, secs. 312, 314, 352, Pub. L. 107-56, 115 Stat. 307.

2. Subpart I of part 103 is amended by adding new §103.137 to read as follows:

### **§ 103.137 Anti-money laundering programs for insurance companies.**

- (a) Definitions. For purposes of this section:

(1) Annuity contract means any agreement between the insurer and the insured whereby the insurer promises to pay out a stipulated income or a varying income stream for a period of time.

(2) Insurance company. (i) Except as provided in paragraph (a)(2)(ii) of this section, the term “insurance company” means any person engaged within the United States as a business in:

- (A) The issuing, underwriting, or reinsuring of a life insurance policy;
- (B) The issuing, granting, purchasing, or disposing of any annuity contract; or
- (C) The issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person.

(ii) An insurance company shall not mean an agent or broker of any business described in paragraph (a)(2)(i) of this section.

(3) Life insurance policy means an agreement whereby the insurer is obligated to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured, including any investment component of the policy.

(4) United States has the same meaning as provided in § 103.11(nn).

(b) Anti-money laundering program requirements for insurance companies. Each insurance company, as defined by paragraph (a)(2) of this section, shall develop and implement a written anti-money laundering program reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. An insurance company shall make its anti-money laundering program available to the Department of the Treasury or its designee upon request.

(c) Minimum requirements. At a minimum, the program required by paragraph (b) of this section shall:

(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its products, customers, distribution channels, and geographic locations. For purposes of making the risk assessment required by this paragraph (c)(1), an insurance company shall consider all relevant information. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the requirements of subchapter II of chapter 53 of title 31, United States Code and this part, and must ensure that the insurance company obtains all the information necessary to make its anti-money laundering program effective.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (c)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risks posed by the financial services provided by the insurance company. Such testing may be conducted by an officer or employee of the insurance company, so long as the tester is not the person designated in paragraph (c)(2) of this section.

(d) Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission. An insurance company that is registered or is required to register with the Securities and Exchange Commission shall be deemed to have satisfied the requirements of this section for those activities regulated by the Securities and Exchange Commission to the extent that the company complies with the anti-money laundering program requirements applicable to such activities that are imposed by the Securities and Exchange Commission or by a self-regulatory organization registered with the Securities and Exchange Commission.

Dated: \_\_\_\_\_

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James F. Sloan

Director,

Financial Crimes Enforcement Network